

EXHIBIT 105

Trenton, NJ

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-----X

IN RE: PHARMACEUTICAL INDUSTRY) MDL NO. 1456
AVERAGE WHOLESALE PRICE) CIVIL ACTION:
LITIGATION) 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO)
ALL CLASS ACTIONS)

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VIDEOTAPED DEPOSITION OF THE NEW JERSEY DEPARTMENT
OF HUMAN SERVICES by EDWARD J. VACCARO

C O M P U T E R I Z E D T R A N S C R I P T
of the stenographic notes of the proceedings in the
above-entitled matter as taken by and before MARY T.
NOVAK, a Certified Shorthand Reporter and Notary
Public of New Jersey, at the U.S. Attorney's Office,
402 East State Street, Trenton, New Jersey on
Tuesday, December 2, 2008 commencing at fifteen
minutes after nine o'clock in the forenoon.

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<p>1 APPEARANCES</p> <p>2</p> <p>3 Attorneys for United States and United States ex</p> <p>4 rel. Ven-a-Care of the Florida Keys v. Abbott</p> <p>5 Laboratories, Inc., Dey Labs and Roxane</p> <p>6 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>7 BY: JAMIE ANN YAVELBERG, ESQ.</p> <p>8 Commercial Litigation Branch</p> <p>9 Ben Franklin Station, P.O. Box 261</p> <p>10 Washington, D.C. 20044</p> <p>11 (202) 514-6514</p> <p>12 jamie.yavelberg@usdoj.gov</p> <p>13</p> <p>14 Attorney for the State of New Jersey and</p> <p>15 Edward J. Vaccaro</p> <p>16 STATE OF NEW JERSEY</p> <p>17 BY: ZOE J. McLAUGHLIN, ESQ.,</p> <p>18 DEPARTMENT OF LAW & PUBLIC SAFETY</p> <p>19 25 Market Street</p> <p>20 Trenton, New Jersey 08625</p> <p>21 (609) 341-3689</p> <p>22 zoe.mclaughlin@law.dol.lps.state.nj.us</p>	<p>1 INDEX</p> <p>2</p> <p>3 WITNESS: EDWARD J. VACCARO PAGE</p> <p>4 EXAMINATION BY MS. YAVELBERG..... 009</p> <p>5 EXAMINATION BY MR. KIM..... 181</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 NUMBER DESCRIPTION PAGE</p> <p>10 Exhibit Vaccaro 001 - Subpoena..... 013</p> <p>11 Exhibit Vaccaro 002 - Federal Register, Vol. 52,</p> <p>12 No. 147, Friday, July 21,</p> <p>13 1987 / Rules and</p> <p>14 Regulations..... 035</p> <p>15 Exhibit Vaccaro 003 - Chapter 51, Pharmaceutical</p> <p>16 Services, Division of</p> <p>17 Medical Assistance And</p> <p>18 Health Services</p> <p>19 Pharmaceutical Services</p> <p>20 Manual N.J.A.C. 10:51</p> <p>21 dated January 20th, 2004. 041</p> <p>22 (CONTINUED)</p>
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<p>1 APPEARANCES (CONTINUED)</p> <p>2</p> <p>3 Attorneys for Dey, LP and Dey, Inc.</p> <p>4</p> <p>5 KELLEY DRYE & WARREN, LLP</p> <p>6 BY: SUNG W. KIM, ESQ.,</p> <p>7 101 Park Avenue</p> <p>8 New York, New York 10178</p> <p>9 (212) 808-7962</p> <p>10 sukim@kelleydrye.com</p> <p>11</p> <p>12</p> <p>13 APPEARING TELEPHONICALLY</p> <p>14</p> <p>15 Attorneys for Abbott Laboratories</p> <p>16</p> <p>17 JONES DAY</p> <p>18 BY: ERIC P. BERLIN, ESQ.,</p> <p>19 77 West Wacker Drive</p> <p>20 Chicago, Illinois 60601</p> <p>21 (312) 269-4117</p> <p>22</p>	<p>1 EXHIBITS (CONTINUED)</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Vaccaro 004 - Attachment 4.19B..... 051</p> <p>4 Exhibit Vaccaro 005 - Department of Health and</p> <p>5 Human Services document</p> <p>6 dated August 12, 1994</p> <p>7 from Director, Medicaid</p> <p>8 Bureau..... 097</p> <p>9 Exhibit Vaccaro 006 - Memorandum dated December</p> <p>10 6, 1996 from Michael</p> <p>11 Mangano for June Gibbs</p> <p>12 Brown..... 123</p> <p>13 Exhibit Vaccaro 007 - Letter dated January 1996</p> <p>14 to Edward Vaccaro on the</p> <p>15 letterhead of Dey</p> <p>16 Laboratories..... 140</p> <p>17 Exhibit Vaccaro 008 - United States First</p> <p>18 Amended Complaint..... 147</p> <p>19 Exhibit Vaccaro 009 - United States' Complaint,</p> <p>20 United States District</p> <p>21 Court, District of</p> <p>22 Massachusetts..... 150</p>

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1	E X H I B I T S (CONTINUED)		1	P R O C E E D I N G S	
2	NUMBER	DESCRIPTION PAGE	2		
3	Exhibit Vaccaro 010 - Graph entitled Figure 1:		3	THE VIDEOGRAPHER: We are here today,	
4	Abbott's FDB Direct Price		4	December 2nd, 2008 for the videotape deposition	
5	vs. Abbott's Direct		5	of Edward Vaccaro.	
6	Average Price for		6	This deposition is being taken in the	
7	Vancomycin..... 153		7	matter of the Pharmaceutical Industry Average	
8	Exhibit Vaccaro 011 - Reimbursement Comparison		8	Wholesale Price Litigation which is filed in the	
9	Worksheet..... 165		9	Superior Court, the United States Superior Court,	
10	Exhibit Vaccaro 012 - Notice of Subpoena..... 182		10	District of Massachusetts.	
11	Exhibit Vaccaro 013 - Subpoena Duces Tecum..... 185		11	I am the videographer, Daniel Grbich,	
12	Exhibit Vaccaro 014 - New Jersey Medicaid		12	and I represent Henderson Legal Services. The	
13	Agency Organizational		13	court reporter is Mary Novak of Henderson Legal	
14	Chart..... 187		14	Services. At this time will counsel please	
15	Exhibit Vaccaro 015 - Letter from the Northern		15	announce their appearance for the record.	
16	Medicaid Pharmacy		16	MS. McLAUGHLIN: Zoe McLaughlin, Deputy	
17	Administrators		17	Attorney General. I represent the witness.	
18	Association to HCFA dated		18	MS. YAVELBERG: Jamie Ann Yavelberg,	
19	September 16, 1985..... 229		19	United States Department of Justice.	
20	Exhibit Vaccaro 016 - Letter to Health Care		20	MR. KIM: Sung W. Kim representing the	
21	Financing Administration		21	Dey entities.	
22	from Alvin N. Geser..... 271		22	MR. BERLIN: Eric Berlin representing	

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1	E X H I B I T S (CONTINUED)		1	Abbott Laboratories.	
2	NUMBER	DESCRIPTION PAGE	2	THE VIDEOGRAPHER: The time is now	
3	Exhibit Vaccaro 017 - News Release from the		3	9:17. Will the court reporter please swear in	
4	American Pharmaceutical		4	the witness.	
5	Association dated		5		
6	September 27, 1985..... 278		6	E D W A R D J. V A C C A R O,	
7	Exhibit Vaccaro 018 - State Plan of New Jersey. 298		7	10 Wagonwheel Drive, Frenchtown, New Jersey	
8	Exhibit Vaccaro 019 - Newsletter dated March		8	08825, having been duly sworn testifies as	
9	11, 1991, Bates stamped		9	follows:	
10	JN-AWP-00000743..... 305		10		
11	Exhibit Vaccaro 020 - MC6 Claim Form Bates		11	EXAMINATION	
12	stamped NJ-AWP-00000533.. 315		12	BY MS. YAVELBERG:	
13			13	Q. Good morning, Mr. Vaccaro. I represent	
14			14	the United States and United States ex rel. Ven-	
15			15	a-Care of the Florida Keys v. Abbott	
16			16	Laboratories, Dey Labs and Roxane and their	
17			17	associated entities which is otherwise known as	
18			18	the In Re: Pharmaceutical Industry Wholesale	
19			19	Price Litigation in which those three companies	
20			20	are defendants.	
21			21	Mr. Vaccaro, do you understand that you	
22			22	are testifying under oath today?	

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<p style="text-align: right;">Page 90</p> <p>1 drug association met with you or met with the 2 Department of Human Services, did they also 3 indicate to you that they were speaking with 4 state legislators? 5 A. Oh, absolutely. Absolutely. In fact, 6 they can identify the ones they were targeting. 7 MS. YAVELBERG: Thank you. We'll take 8 a short break. 9 THE VIDEOGRAPHER: The time is now 10 10:33. We're going off the video record. 11 (A recess is taken.) 12 THE VIDEOGRAPHER: The time is now 13 10:47. This begins videotape number 2 of the 14 videotape deposition. You may proceed. 15 BY MS. YAVELBERG: 16 Q. In addition to drug ingredient cost, 17 Mr. Vaccaro, is there another portion of 18 reimbursement for pharmacy claims? 19 A. Yes. 20 Q. And what is that? 21 A. The dispensing fee. 22 Q. And what is the actual amount of the</p>	<p style="text-align: right;">Page 92</p> <p>1 about the New Jersey dispensing fee? 2 A. Yes. 3 Q. You mentioned that there's a base rate 4 of \$3.73 and then I think you referred to 5 something called add-ons? 6 A. Yes. 7 Q. What are add-ons? 8 A. There are three add-ons. One is an 9 impact allowance that some additional dispensing 10 fee provided to pharmacies who are in high 11 Medicaid areas. Another add-on is for 24 hour 12 emergency dispensing and the third add-on is for 13 patient consultation services. 14 Q. And you said that the maximum 15 dispensing fee was \$4.07? 16 A. Prior to this budget year. 17 Q. And this budget year, what did it 18 change to? 19 A. I believe it's 3.99. 20 Q. And so the combination of the impact 21 area, the 24 hour, and the patient consultation 22 could raise the pharmacy's dispensing fee from</p>
<p style="text-align: right;">Page 91</p> <p>1 New Jersey dispensing fee? 2 A. There's a base dispensing fee amount of 3 373 and then there are three add-on components 4 that bring it up to a total of, well, until prior 5 to this year 407. 6 Q. And when you say 373, is that \$3.73? 7 A. Correct. 8 Q. And when you say 407, is that \$4.07? 9 A. Yes. 10 MS. YAVELBERG: Can we take a moment to 11 go off the record. 12 THE VIDEOGRAPHER: The time is now 13 10:47. We're going off the video record. 14 MS. YAVELBERG: This is a fax for me. 15 (Off the record.) 16 MS. YAVELBERG: We're ready to go back 17 on. 18 THE VIDEOGRAPHER: Ready to proceed. 19 The time is now 10:51. We're back on the video 20 record. 21 BY MS. YAVELBERG: 22 Q. So, Mr. Vaccaro, we were just talking</p>	<p style="text-align: right;">Page 93</p> <p>1 \$3.73 to \$4.07 until just this year which you 2 think it was reduced to \$3.99? 3 A. Correct. 4 Q. Is that correct? And how did a 5 pharmacy apply for or get the add-ons? 6 A. Again, the FD 70 document was 7 communicated to pharmacies and they would come 8 back to us with an indication as to whether or 9 not they were in an impact area, whether they 10 provided patient consultation, and whether they 11 provided 24 hour emergency services. 12 Q. And this FD 70 that you referred to, 13 was that also used for the volume, the 14 certification as to annual volume? 15 A. That's correct. 16 Q. The same form? 17 A. Yes. 18 Q. And that's annually? 19 A. That's annually, yeah. 20 Q. And how, the \$3.73 base rate, how long 21 has that been the New Jersey base rate for the 22 dispensing fee?</p>

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<p>1 A. Over 20 years.</p> <p>2 Q. And how is the dispensing fee -- where</p> <p>3 is the dispensing fee written down?</p> <p>4 A. In New Jersey Administrative Code</p> <p>5 10:51.</p> <p>6 Q. And if you could take a look at Exhibit</p> <p>7 3 which we've already marked. And flip to Page</p> <p>8 9, Section 1.7.</p> <p>9 MR. KIM: I'm sorry. Page 9?</p> <p>10 MS. YAVELBERG: Page 9.</p> <p>11 THE WITNESS: The back side.</p> <p>12 MS. YAVELBERG: You need Exhibit 3.</p> <p>13 MS. McLAUGHLIN: It would be that one.</p> <p>14 MR. KIM: This one, okay.</p> <p>15 Q. Exhibit 3, Page 9, 10:51, Section 1.7,</p> <p>16 Prescription Dispensing Fee.</p> <p>17 Do you see that there, Mr. Vaccaro?</p> <p>18 A. Yes.</p> <p>19 Q. And does this portion, Section 1.7 of</p> <p>20 the New Jersey Code reflect the dispensing fee</p> <p>21 for the State of New Jersey?</p> <p>22 A. Yes, it does.</p>	<p>1 forward regulations that would impact</p> <p>2 reimbursement unless it had the full support of</p> <p>3 the Department of Human Services or the</p> <p>4 Governor's Office.</p> <p>5 Q. So it could propose, it could make</p> <p>6 proposals?</p> <p>7 A. Yes. It can do proposals, yes.</p> <p>8 Q. But it can't make the change without</p> <p>9 the full support --</p> <p>10 A. That's correct.</p> <p>11 Q. -- of the department and the Governor's</p> <p>12 Office?</p> <p>13 A. That's correct.</p> <p>14 Q. Thank you for that clarification. If</p> <p>15 pharmacists complained that overall reimbursement</p> <p>16 was too low and the dispensing fee needed to be</p> <p>17 raised to make up the shortfall, could DMS do</p> <p>18 that on its own?</p> <p>19 A. No.</p> <p>20 Q. How does the New Jersey dispensing fee</p> <p>21 compare to the dispensing fees of other states?</p> <p>22 A. It's generally higher than other</p>
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<p>1 Q. And does this also reflect these add-</p> <p>2 ons that you were referring to?</p> <p>3 A. Yes, it does.</p> <p>4 Q. Can DMAHS administratively change that</p> <p>5 dispensing fee if it wants to?</p> <p>6 A. No.</p> <p>7 Q. If pharmacists complained -- I'm sorry?</p> <p>8 A. Let me amend that prior answer.</p> <p>9 Q. Please do.</p> <p>10 A. DMAHS, like any of the divisions within</p> <p>11 state government, have the ability or the right</p> <p>12 to go to the register and change regulations.</p> <p>13 There would be no support for a change of</p> <p>14 regulations that impacted reimbursement unless it</p> <p>15 got the full support of the department and the</p> <p>16 Governor's Office.</p> <p>17 Q. So DMAHS --</p> <p>18 A. Has the ability to go to the register</p> <p>19 for the purpose of changing regulations. For</p> <p>20 example, this document is due for sunset. It has</p> <p>21 established regulations to keep it going after</p> <p>22 January 20th of next year. It would not move</p>	<p>1 states.</p> <p>2 MS. YAVELBERG: I'd like to mark this</p> <p>3 next document as Exhibit 5.</p> <p>4 (A document entitled Department of</p> <p>5 Health and Human Services dated August 12, 1994</p> <p>6 from Director, Medicaid Bureau is received and</p> <p>7 marked as Exhibit Vaccaro 005 for</p> <p>8 identification.)</p> <p>9 Q. Mr. Vaccaro, I'm handing you a document</p> <p>10 marked as Exhibit 5. It is dated August 12, 1994</p> <p>11 and the heading is Department of Health and Human</p> <p>12 Services. It's from the Director, Medicaid</p> <p>13 Bureau. Subject: Expiration of Pharmacy</p> <p>14 Reimbursement Moratorium Information to All</p> <p>15 Associate Regional Administrators Division of</p> <p>16 Medicaid.</p> <p>17 Do you see that there?</p> <p>18 A. Yes, I do.</p> <p>19 Q. I'd like you to look on the back side</p> <p>20 of this document and look at the paragraph near</p> <p>21 the bottom which starts at "we would also</p> <p>22 clarify".</p>

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<p style="text-align: right;">Page 170</p> <p>1 they contain spreads that might be in the range 2 of a thousand percent. 3 A. Yes. 4 MR. KIM: Objection to form. 5 A. Yes. 6 Q. Do you agree that that's what those 7 Complaints, at least, represented? 8 A. Yes. 9 MR. KIM: Objection to form. 10 Q. Now, did New Jersey know that the 11 spreads that are claimed in those Complaints that 12 Abbott and Dey and Roxane may have had were as 13 much as a thousand percent? 14 MR. KIM: Objection to form. 15 A. For certain products we were aware of a 16 significant difference between possible 17 acquisition costs and AWP. 18 Q. And if I draw your attention back to 19 Exhibit 6, which is the 1996 Office of Inspector 20 General Report. And the third paragraph on the 21 front page of that document. 22 A. Yes.</p>	<p style="text-align: right;">Page 172</p> <p>1 correct? 2 A. Correct. 3 Q. And is this, the differences between 4 acquisition price and average wholesale price 5 represented in this report, is that consistent 6 with what New Jersey knew at that time? 7 A. Yes. 8 Q. Now, does New Jersey have any way, have 9 a way of knowing from the prices that are listed 10 in the First DataBank database which ones might 11 have AWP's that are more than, for example, the 12 39.9 percent for generic drugs? 13 A. No. 14 MR. KIM: Objection to form. 15 Q. And which ones may not -- 16 MS. YAVELBERG: I'm sorry. What was 17 the objection? 18 MR. KIM: It's, first of all, vague. 19 Are you talking about particular drugs? 20 MS. YAVELBERG: No. Let me try to 21 rephrase the question. 22 MR. KIM: Please do.</p>
<p style="text-align: right;">Page 171</p> <p>1 Q. Is there a discussion about the 2 differences between acquisition cost and average 3 wholesale price in New Jersey pharmacies? 4 A. Yes. 5 Q. And what was the difference there? 6 A. Depending upon the type of drug for 7 generic it was 18.3 percent and for brands it 8 was, I'm sorry, other way around. For brands it 9 was 18.3 percent and generics was 42.5 percent. 10 Q. And what about specifically for New 11 Jersey? 12 THE REPORTER: I'm sorry. 18 point -- 13 THE WITNESS: 18.3 percent for brands. 14 And 42.5 percent for generics. 15 That was a national estimate. For New 16 Jersey it was 19.8 percent for brand and 39.9 17 percent for generics. 18 Q. And we've already looked at the last 19 two pages of this document which represent the 20 New Jersey -- 21 A. Right. 22 Q. -- letter in response to that report,</p>	<p style="text-align: right;">Page 173</p> <p>1 Q. Now, I think you testified earlier that 2 New Jersey used the First DataBank drug reference 3 file; is that correct? 4 A. Correct. 5 Q. And New Jersey covers about 50,000 6 drugs? 7 A. Correct. 8 Q. So based on the drug reference file 9 that New Jersey used for, and it did use for 10 reimbursement purposes; is that correct? 11 A. Correct. 12 Q. Did New Jersey have any way of knowing, 13 from the database that it received, which AWP's in 14 the database might exceed the, for example, 39.9 15 percent that's listed in this OIG report? 16 A. No, we did not. 17 Q. Could you tell from looking at the 18 database? 19 A. No. 20 Q. If a manufacturer reported inflated 21 prices to First DataBank -- 22 MR. KIM: Objection to form.</p>

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<p style="text-align: right;">Page 238</p> <p>1 Q. So what I'm asking is, as long as it's</p> <p>2 approved in the State Plan, the states have the</p> <p>3 authority to propose state plans, would you</p> <p>4 agree?</p> <p>5 A. Yes.</p> <p>6 Q. And part of the State Plan proposals</p> <p>7 include reimbursement methodology?</p> <p>8 A. Yes.</p> <p>9 Q. Correct?</p> <p>10 A. Yes.</p> <p>11 Q. And choosing a benchmark such as WAC or</p> <p>12 AWP is within the power of the states to do so</p> <p>13 within the State Plan; is that correct?</p> <p>14 A. Yes.</p> <p>15 MS. YAVELBERG: Objection. Form.</p> <p>16 Q. And different states have the ability</p> <p>17 to do this; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And each state had to set its</p> <p>20 reimbursement rates high enough to insure an</p> <p>21 adequate number of providers that participate in</p> <p>22 the program; is that correct?</p>	<p style="text-align: right;">Page 240</p> <p>1 it be beneficiary advocacy groups or if we were</p> <p>2 going to somehow impose changes on eligibility.</p> <p>3 In the case of pharmacy we brought the</p> <p>4 associations to the table, including Pharma, when</p> <p>5 it was appropriate to do so, for the purpose of</p> <p>6 taking in their recommendations regarding</p> <p>7 reimbursement. For example, if we were proposing</p> <p>8 a certain level of reimbursement that we knew</p> <p>9 would be antagonistic we would ask them for their</p> <p>10 own proposals as alternatives to a change in</p> <p>11 reimbursement if indeed a goal was to save</p> <p>12 dollars. That kind of thing.</p> <p>13 So what I think you're looking at here</p> <p>14 is in the 90's our efforts to try and, you know,</p> <p>15 reduce the rhetoric, if you will, from the</p> <p>16 various professional organizations, state or</p> <p>17 national, they would bring their national</p> <p>18 advocates in with them. Okay. And to try and</p> <p>19 work things out with interested parties ahead of</p> <p>20 time before we put something in place.</p> <p>21 Q. Okay. It says National Pharmacy</p> <p>22 Associations.</p>
<p style="text-align: right;">Page 239</p> <p>1 MS. YAVELBERG: Objection. Form.</p> <p>2 A. Correct.</p> <p>3 Q. Actually, let's stick with that same</p> <p>4 exhibit. The first paragraph that I read to you</p> <p>5 on the second page says, "without incurring the</p> <p>6 wrath of National Pharmacy Associations."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. During your time at Medicaid -- I'm</p> <p>10 sorry. Let me clarify it.</p> <p>11 During the 1990's, was that a concern</p> <p>12 to not incur the wrath of National Pharmacy</p> <p>13 Associations when you were developing</p> <p>14 reimbursement methodology?</p> <p>15 MS. YAVELBERG: Objection. Form.</p> <p>16 A. I think there was a strategy</p> <p>17 implemented by the agency starting in the early</p> <p>18 90's and forward that brought interested parties,</p> <p>19 advocates to the table before they made decisions</p> <p>20 that impacted, for example, reimbursement.</p> <p>21 Q. When you say agency, which --</p> <p>22 A. Advocates. We're talking about whether</p>	<p style="text-align: right;">Page 241</p> <p>1 A. Right.</p> <p>2 Q. To your knowledge, they don't include</p> <p>3 manufacturers; is that correct?</p> <p>4 A. (No verbal response.)</p> <p>5 Q. When you've heard the term National</p> <p>6 Pharmacy Associations, have you typically</p> <p>7 included manufacturers as part of that group of</p> <p>8 National Pharmacy Associations?</p> <p>9 A. No.</p> <p>10 MR. KIM: Thank you. Mark another</p> <p>11 exhibit. This was previously marked as Dey-81,</p> <p>12 Exhibit Dey-81.</p> <p>13 I think I'm just going to hand this to</p> <p>14 the witness. We don't have to remark it, right?</p> <p>15 THE REPORTER: No.</p> <p>16 MR. KIM: Okay.</p> <p>17 Q. This is a section of the CFR, Subpart</p> <p>18 B, Payments for Services. And Section 447.204</p> <p>19 and it says, the brief title is Encouragement of</p> <p>20 Provider Participation. Are you familiar with</p> <p>21 this regulation?</p> <p>22 A. Yes.</p>

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